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June 2018

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INCOME TAX

Amendment in the agreement between the government of the republic of India and the government of the state of Kuwait, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

A Protocol to amend the existing Double Taxation Avoidance Agreement (DTAA) between India and Kuwait signed on 15.06.2006 for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income was signed on 15.01.2017. The said Protocol has entered into force on 26.03.2018 and is notified in Official Gazette on 04.05.2018. The Protocol updates the provisions in the DTAA for exchange of information as per international standards. Further, the Protocol enables sharing of the information received from Kuwait for tax purposes with other law enforcement agencies with authorization of the competent authority of Kuwait and vice versa.

Press Information Bureau, dated 7th May 2018

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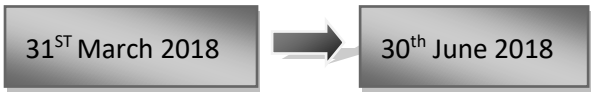
GOODS AND SERVICE TAX

CBEC has issued Notification No. 10/2018 – Central Tax (Rate) dated 23.03.2018 providing exemption to registered persons from paying CGST under reverse charge on supply of goods or services from unregistered person to registered person till 30.06.2018.

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby makes the following further amendment in the notification of the Government of India, in the Ministry of Finance (Department of Revenue),No.8/2017 – Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 680 (E), dated the 28th June, 2017, and amended vide notification No.38/2017- Central Tax (Rate), dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R. 1262 (E), dated the 13th October, 2017, namely:- In the said notification, for the figures, letters and words "31st day of March, 2018", the figures, letters and

words "30th day of June, 2018" shall be substituted.



Similar notification is also published for IGST and UTGST in Notification no.11/2018-Integrated Tax (Rate) and no.10/2018- Union territory tax rate.

Notification No. 10/2018- Central Tax, dated 23th March,, 2018

Central Board of Excise and Customs

Exchange Rates w.e.f 18th May 2018.

In exercise of the powers conferred by section 14 of the Customs Act, 1962 (52 of 1962), and in supersession of the notification of the Central Board of Excise and Customs No.35/2018-CUSTOMS (N.T.), dated 3rd May, 2018 except as respects things done or omitted to be done before such supersession, the Central Board of Indirect Taxes and Customs hereby determines that the rate of exchange of conversion of each of the foreign currencies specified in column (2) of each of Schedule I and Schedule II annexed hereto, into Indian currency or vice versa, shall, with effect from 18th May, 2018, be at the rate mentioned against it in the corresponding entry in column (3) thereof, for the purpose of the said section, relating to import and export of goods.

Notification No. 43/2018- Customs (N.T) dated 17th May 2018.

RESERVE BANK OF INDIA

Setting up of IFSC Banking Units (IBUs) – Permissible activities.

The existing paragraph No.2.3 of Annex I of the aforesaid *circular dated April 1, 2015* is amended to read as follows:

With a view to enabling IBUs to start their operations, the parent bank will be required to provide a minimum capital of USD 20 million or equivalent in any foreign currency to its IBU which should be maintained at all times. However, the minimum prescribed regulatory capital, including for the exposures of the IBU, shall be maintained on an on-going basis at the parent level.

The existing paragraph No.2.3 of Annex II of the aforesaid *circular dated April 1, 2015* is amended to read as follows:

With a view to enabling IBUs to start their operations, the parent bank will be required to provide a minimum capital

Of USD 20 million or equivalent in any foreign currency to its IBU which should be maintained at all times. However, the minimum prescribed

regulatory capital, including for the exposures of the IBU, shall be maintained on an on-going basis at the parent level as per regulations in the home country and the IBU shall submit a certificate to this effect obtained from the parent on a half-yearly basis to RBI (International Banking Division, DBR, CO, RBI). The parent bank will be required to provide a Letter of Comfort for extending financial assistance, as and when required, in the form of capital / liquidity support to IBU.

RBI Circular no. DBR.IBD.BC 105/23.13.004/2017-18 dated 17th May 2018.

ECONOMICS

Government notifies 8.55% interest on PF for 2017-18, lowest in 5 years.

Retirement fund body has asked its field offices to credit 8.55 per cent rate of interest for 2017-18, the lowest rate since 2012-13 fiscal, into the PF accounts of around 5 crore subscribers.

The Labour Ministry has conveyed approval of the central government to credit 8.55 per cent rate of interest for 2017-18 into PF accounts of members, according to an order issued by the EPFO to its more than 120 field offices.

The finance ministry had ratified 8.55 per cent rate of interest on EPF for the last fiscal. But it could not be implemented because of model code of conduct for Karnataka elections.

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The EPFO's Central Board of Trustees, headed by the labour minister, had decided to fix rate of interest at 8.55 per cent for the last fiscal in its meeting held on February 21, 2018.

The labour ministry had sent the CBT's recommendation over the rate of interest to the finance ministry for its concurrence.

The EPFO had provided 8.65 per cent interest for 2016-17. The members got 8.8 per cent in 2015-16 and 8.75 per cent each in 2014-15 and 2013-14.

In 2012-13, EPFO had provided 8.5 per cent rate of interest on EPF. Thus, at 8.55 per cent for 2017-18, it is a five year low.

The Economic Times dated 22nd Feb 2018

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SUMMARY OF IMPORTANT TAX JUDGEMENTS

Unless otherwise stated, the sections mentioned hereunder relate to the Income Tax Act, 1961

Sr. No	Tribunal/Court	Section/ Area	Nature	Case Law
1	ITAT Amritsar	Sec14A, Rule 8D	Disallowance u/s 14A & Rule 8D has to be made even if the assessee has not earned any tax-free income on the investment. Cheminvest 378 ITR 33 (Del) is not binding on the AO as it is a non-jurisdictional High Court. CBDT's Circular 5/2014 is in accordance with Godrej & Boyce Mfg. Co. Ltd 394 ITR 449 (SC) & Maxopp Investment Ltd 402 ITR 640 (SC)	Lally Motors India (P).Ltd vs PCIT
2	ITAT Jaipur	Sec 40A(3), Rule 6DD	S. 40A(3) Rule 6DD: No disallowance can be made for cash payments if the transaction is genuine and the identity of the payee is known. Rule 6DD is not exhaustive. The fact that the transaction does not fall with Rule 6DD does not mean that a disallowance has to be per force made	M/S A Daga Royal Arts vs ITO
3	Gujarat High court	Sec 147 and Sec 148	S. 147: Even Section . 143(1) assessment cannot be reopened without proper 'reason to believe'. If the reasons state that the information received from the VAT Dept that the assessee entered into bogus purchases "needed deep verification", it means the AO is reopening for doing a 'fishing or roving inquiry' without proper reason to believe, which is not	PCIT vs. Manzil Dineshkumar Shah

			permissible	
4	Gujarat High court	Sec 195, 40(a)(i), 9	S. 9/ 40(a)(i)/ 195: Explanation 2 to s. 195(1) inserted by Finance Act 2012 with retrospective effect from 01.04.1962 has bearing while ascertaining payments made to non-residents is taxable under the Act or not. However, it does not change the fundamental principle that there is an obligation to deduct TDS only if the sum is chargeable to tax under the Act. If the conclusion is arrived that such payment does not entail tax liability of the payee under the Act, s. 195(1) does not apply	PCIT vs Nova Technocast Pvt Ltd
5	ITAT Mumbai	Sec 250, Rule 45	Rule 45 of the Income Tax Rules which mandates compulsory e-filing of appeals before the CIT(A) w.e.f. 01.04.2016 is a procedural and technical requirement. It cannot defeat the statutory right of an assessee to file an appeal. An assessee who has filed the appeal in paper format should be permitted to make good the default and to file an appeal electronically	All India Federation of Tax Practitioners vs. ITO

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Discussion on Judgments – Income Tax

1. **Disallowance u/s 14A & Rule 8D has to be made even if the assessee has not earned any tax-free income on the investment. Cheminvest 378 ITR 33 (Del) is not binding on the AO as it is a non-jurisdictional High Court. CBDT's Circular 5/2014 is in accordance with Godrej & Boyce Mfg. Co. Ltd 394 ITR 449 (SC) & Maxopp Investment Ltd 402 ITR 640 (SC)**

Facts of the Case:

- The assessee firm made investments in shares. The Assessing Officer during the course of assessment proceedings queried the assessee on the applicability of section 14A in view of investment in shares. The assessee replied by stating that it had not earned any income by way of dividend on the said shares, for section 14A to apply. Two, it had not incurred any expenditure in relation to the said investment in shares, so that section 14A would even otherwise not apply.

- The assessee had negative net worth. The borrowed funds of the assessee were roughly Rs. 11 crore; on which interest of Rs. 3.59 crore was debited in the profit and loss account. Further, the assessee had debited administrative expenses in its profit and loss account.

The High Court held that:

- The first observation in the matter is a complete absence of any examination by the Assessing Officer qua the aspect of incurring of expenditure by the assessee-company in relation to the investment/s yielding (or liable to yield) tax-exempt income, which, in-so-far as it relates to the investment in shares is apparent from a bare browse of the assessee's final accounts. If the assessee-company has incurred interest expenditure in relation to the said investment. The administration expenditure, incurred at Rs. 2.36 cr., attributable to the said investment, i.e., if any, cannot be inferred from the face of the final accounts, which aspect would require factual verification. Absence of inquiry, where required and warranted in the facts and circumstances of the case, is a valid basis for invocation of section 263.

- The Assessing Officer, despite an order by the revisionary authority directing him to do so, cannot pass an order consistent with the Board Circular where the same has been struck down by a competent court, unless, of course, the same stands, at the same time, upheld by the jurisdictional High Court. In fact, even a decision by the said court (or by the Apex Court) contrary to the dictum of the said Circular, i.e., without it being stayed or struck down by any court, shall have same effect, so that the said circular would in that case lose its binding force on the Assessing Officer.

- The Court had issued an impugned order, both on the aspect of lack of inquiry by the assessing authority, as well as his non-observance of the Board Circular 5/2014. The impugned order being after the date of amendment to section 263, the same is an equally valid ground for the exercise of revisionary power u/s. 263 .That is, the law, w.e.f. 01.06.2015, deems an order as so, where any of the circumstances specified is, in the opinion of the competent authority, satisfied. It has nothing to do with the date of the passing of the order deemed erroneous, or the year to which it pertains.

- In the result, the assessee's appeal is dismissed.

(Lally Motors India (P.) Ltd v/s PCIT)

2. No disallowance can be made for cash payments if the transaction is genuine and the identity of the payee is known. Rule 6DD is not exhaustive. The fact that the transaction does not fall with Rule 6DD does not mean that a disallowance has to be per force made Facts of the case:

- **Assessee firm has purchased 26 pieces of plot of land in the month of April and May, 2012 from various persons for a total consideration of Rs. 2,46,28,425/-out of which payment amounting to Rs. 1,71,67,000/- were made in cash to various persons, payment amount**ing to Rs. 59,48,920/- were made in cheque to various persons, and Rs. 8,15,700/- and Rs. 6,84,296/- were paid in cash towards stamp duty and Court fee respectively.

- The Assessee submitted that it has purchased the plots of land in the month of April and May, 2012 as capital asset but later on, the same have been converted into stock-in-trade and the reflection and presentation in the annual accounts has been made accordingly. It was further submitted that the payment for purchase of land has been made in cash because the sellers were new to the assessee and refused to accept the cash. It was submitted that the delay in making the cash payment, it could have lost the land deals

The Court held that:

- It was observed that cash payments for the purpose of acquiring capital asset, being investments, are not covered by the provisions of section 40A(3) of Act.

- Given that there has been no change in the provisions of section 40A (3) in so far as consideration of business expediency and other relevant factors are concerned, the same continues to be relevant factors which needs to be considered and taken into account while determining the exceptions to the disallowance as contemplated under section 40A (3) of the Act so long as the intention of the legislature is not violated.

- The Court had referred the decision of the Hon'ble Rajasthan High Court in case of Smt. Harshila Chordia vs. ITO (supra), where the facts of case were that the assessee had made certain cash payments towards purchase of

scooter/mopeds which exceeded Rs. 10,000/- in each case to the principal agent instead of making payment through the cross cheques or bank draft. The AO invoked the provisions of section 40A (3) and held that they were no exceptional circumstances falling under rule 6DD which could avoid consequences of the provisions of section 40A (3) of the Act. The ld. CIT(A) held that such exceptional circumstances did exist. However, the findings of the ld. CIT (A) were reversed by the Tribunal and the matter came up for consideration before the Hon'ble High Court.

- The Hon'ble High Court refers to the clause 6DD (j) (where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike) and the circular dated 31st May, 1977 issued by the Board in the context of what shall constitute exceptional and unavoidable circumstances within the meaning of said Clause (j). The Hon'ble High Court observed that the circular in paragraph 5 gives a clear indication that rule 6DD (j) has to be liberally construed and ordinarily where the genuineness of the transaction and the payment and the identity of the receiver is established, the requirement of rule 6DD (j) must be deemed to have been satisfied.

- Hence, the legal proposition that arises from the above decision of the Hon'ble Rajasthan High Court is that the consequences, which were to befall on account of non-observation of sub-section (3) of section 40A must have nexus to the failure of such object. Therefore the genuineness of the transactions and it being free from vice of any device of evasion of tax is relevant consideration and which should be examined before invoking the rigours of section 40A (3) of the Act.

- In the result, the assessee's appeal is allowed.

(M/S A Daga Royal Arts vs ITO)

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3. S. 147: Even section. 143(1) assessment cannot be reopened without proper 'reason to believe'. If the reasons state that the information received from the VAT Dept that the assessee had entered into bogus purchases "needed deep verification", it means the AO is reopening for doing a 'fishing or roving inquiry' without proper reason to believe, which is not permissible.

Facts of the case:

- Respondent assessee is an individual and is a proprietor of one trading firm. For the assessment year 2009-10, the return filed by the assessee was accepted without scrutiny. To reopen such assessment, the Assessing Officer issued a notice. In order to issue the notice, he had recorded following reasons

- The assessee has filed his return of Income for A.Y. 2009-10 on 30/09/2010 declaring total

income Rs. 3,44,587. However no scrutiny assessment u/s 143(3) was made.

- The Assessing Officer received information from the VAT Department relating to bogus purchases of Rs.3,21,74,262/ by Manjit Dineshkumar Shah from Hawala Dealer.

The Court held that:

- Whether the Appellate Tribunal was right in law and on facts in admitting the additional ground challenging the reopening of assessment which was not raised earlier in assessment proceedings as well as before the CIT(A) and therefore was not emerging from the order of the CIT(A)?

- Whether the Appellate Tribunal was right in law and on facts in quashing their assessments order?

- It is equally well settled that the notice of reopening can be supported on the basis of reasons recorded by the Assessing Officer. He cannot supplement such reasons. The third principle of law which is equally well settled and which would apply in the present case is that reopening of the assessment would not be permitted for a fishing or a roving inquiry. This can as well be seen as part of the first requirement of the Assessing Officer having reason to believe that income chargeable to tax has escaped assessment. In other words, notice of reopening which is issued barely for making fishing inquiry, would not satisfy this requirement .

(PCIT vs Manzil Dineshkumar Shah)

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4. S. 9/ 40(a)(i)/ 195: Explanation 2 to s. 195(1) inserted by Finance Act 2012 with retrospective effect from 01.04.1962 has bearing while ascertaining payments made to non-residents is taxable under the Act or not. However, it does not change the fundamental principle that there is an obligation to deduct TDS only if the sum is chargeable to tax under the Act. If the conclusion is arrived that such payment does not entail tax liability of the payee under the Act, s. 195(1) does not apply.

Facts of the case:

- Commission of Rs.81,96,111/- was paid by the assessee to Foreign commission agent (Non Resident Indian)

- The Assessing officers disallowed such commission expenditure, for the failure of the assessee to deduct tax at source.

The court held that:

- Section 195 required that any person responsible for paying to a non resident any some chargeable to tax shall deduct tax there on at the rate in force.

- The court had observed that the agents were not having fixed base in India and have rendered all the sales and marketing services outside India.

- We are of the considered view that the assessee has paid commission to

non-residents in respect of services rendered abroad and the non-residents has not carried any business operation in India, therefore, we find that the assessee is not liable to deduct tax at source.

- The Tribunal relied on judgment of the Supreme Court in the case of G.E India Technology Centre P. Limited vs. Commissioner of Income-Tax & Anr.
- In the present case, the Revenue has not even seriously contended that the payment to foreign commission agent was not taxable in India.
- Tax Appeal is therefore dismissed.

(PCIT v/s Nova Technocast Pvt Ltd.)

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5. Rule 45 of the Income Tax Rules which mandates compulsory e-filing of appeals before the CIT(A) w.e.f. 01.04.2016 is a procedural and technical requirement. It cannot defeat the statutory right of an assessee to file an appeal. An assessee who has filed the appeal in paper format should be permitted to make good the default and to file an appeal electronically.

Facts of the case:

- The assessee filed its return of income on 29.09.11 along with the income and expenditure account, balance sheet and audit report in form 10B declaring total income at Rs. 1,81,777/
- Thereafter, assessment for AY 2013-14 was completed by order u/s 143(3) of the I.T. Act on 17.02.16 at taxable income of Rs. 14,22,664/-
- Aggrieved by the order of AO, the assessee preferred appeal before Ld. CIT (A) in paper form. Where it was mandatory under Rule 45 of the IT Rules 1962 to file appeal in electronic format with effect from 1.3.2016.
- The Ld. CIT (A) dismissed the appeal in limini by holding that mandatory requirement of e-filing of appeal have not been fulfilled by the assessee.

The court held that:

- The court referred the decision of Hon'ble Supreme Court in the case of 'State of Punjab Vs. Shyamalal Murari has categorically held that courts should not go strictly by the rulebook to deny justice to the deserving litigant as it would lead to miscarriage of justice.
- It has been reiterated by the Hon'ble Supreme Court that all the rules of procedure are handmaid of Justice.
- The Hon'ble Apex Court has said in an 'adversarial' system, no party should ordinarily be denied the

opportunity of participating in the process of justice dispensation.

- Hence, from the facts of the present case, we gathered that the assessee had already filed the appeal in paper form, however only the e-filing of appeal has not been done by the assessee and according to us, the same is only a technical consideration. The Supreme Court has reiterated that if in a given circumstances, the technical consideration and substantial justice are pitted against each other, then in that eventuality the cause of substantial justice deserves to be preferred and cannot be overshadowed or negatived by such technical considerations

- The Appeal of the assessee was allowed.

(AIFTP v/s ITO)

Note: The judgments should not be followed without studying the complete facts of the case Law.

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DUE DATE CHART FOR THE MONTH OF JUNE 2018

JUNE 2018

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5	6	7 Monthly TDS payment	8	9
10 GSTR_1 (T/o> 1.5 cr)	11	12	13	14	15 Provident fund payment.	16
17	18	19	20 GSTR 3B	21 ESIC Payment, Payment	22	23 .
24	25	26	27	28	29	30 GST Tran 2 Profession Tax Payment.

This communication is intended to provide general information, guidance on various professional subject matters and should not be regarded as a basis for taking decisions on specific matters. In such instances, separate advice should be taken.

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